A

TETUAN ROS, LEE & CO

v.

TAN MING YEOW

B

COURT OF APPEAL, PUTRAJAYA
ABU SAMAH NORDIN JCA
ALIZATUL KHAIR OSMAN JCA
ANANTHAM KASINATHER JCA
[CIVIL APPEAL NO: W-02(NCVC)-2910-11-2011]

C

2 NOVEMBER 2012

CIVIL PROCEDURE: *Res judicata - Matters which could and should reasonably have been raised in earlier proceedings - Solicitor and client - Agreement on costs - Claim in first suit based on fee calculated from gross sum bill - High Court dismissed claim - Appeal against - Claim in second suit based on detailed bill of costs - Whether second suit similar to first suit in terms of facts, issues and substance - Whether there was duplicity in claim pursued under second suit - Whether doctrine of res judicata applied - Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd*

D

E

LEGAL PROFESSION: *Bill of costs - Legal fees - Agreement on costs - Whether proven - Whether detailed bill of costs must be submitted for taxation - Initial claim based on sum derived from gross sum bill - High Court dismissed claim - Appeal against - Whether appellant allowed to claim sum derived from detailed bills of costs in second suit - Whether doctrine of res judicata applied - Legal Profession Act 1976, ss. 121, 124 & 126*

F

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The appellant was the respondent's solicitor which acted in several contentious legal matters. Upon completion of the said matters, the appellant submitted two gross sum bills to the respondent for payment. The first gross sum bill was for RM350,000, and the second gross sum bill was for RM450,000 ('second bill'). The appellant contended that pursuant on an oral agreement between the parties, the respondent agreed to pay RM800,000 by way of full and final settlement for the legal work undertaken by the appellant. Having paid RM350,000, the respondent claimed that the said sum of RM350,000 was the amount agreed by the parties and not RM800,000. The respondent then engaged a new firm of solicitors and the appellant duly forwarded four detailed bills of costs to the respondent in relation to the second bill. Dissatisfied with the detailed bills of costs, the respondent filed an action in

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I

the High Court ('first suit') and claimed for, *inter alia*, a declaration that the detailed bills of costs were void and unenforceable. However, the detailed bills of costs which took the form of bills of costs had already been filed for taxation. With the consent of the appellant, a consent order was recorded in the first suit whereby the appellant agreed to stay all taxation proceedings until the final disposal of the first suit. A counterclaim was included in the appellant's statement of defence whereby it claimed for the aggregate of the four detailed bills of costs amounting to RM822,310.25 in all and in the alternative, the amount of RM450,000 as demanded in the second bill. However, the respondent's counsel submitted that during the course of trial, the appellants elected to abandon their claim for RM822,310.25 and instead, pursued with the alternative claim for the sum of RM450,000 as contained in the second bill. The learned judge however dismissed both the respondent's claim and the appellant's counterclaim. The appellant then filed a suit in the High Court ('second suit') claiming for the aggregate of the four detailed bills of costs amounting to RM822,310.25. The respondent applied under O. 18 r. 19 of the Rules of the High Court 1980 to strike out the appellant's claim since the said claim was barred by the doctrine of *res judicata*. The learned judge in this matter struck out the appellant's claim and ruled that there was duplicity in the claim pursued by the appellant in the first suit and the counterclaim in the second suit in that the claims in both these suits were substantially similar in terms of the facts, issues and substance. Hence, this appeal. The issue that arose for consideration was whether the appellant could pursue its claim for the sum of RM822,310.25 by way of the second suit.

Held (dismissing appeal with costs)
Per Anantham Kasinather JCA delivering the judgment of the court:

(1) When the counterclaim was filed, the appellant had already issued the four detailed itemised bills of costs in place of the second bill. Based on the authority of *Siew Kuen Williams v. Yong Siew In*, the appellant ought to have sought an order to have the four detailed bills of costs taxed by the Registrar in the first suit although strictly, taxation of a detailed bill of costs was possible without an order (s. 126(1) of the Legal Profession Act 1976). (para 11)

(2) The doctrine of *res judicata* in its wider sense extends to preclude a litigant from raising, in subsequent proceedings, matters which could and therefore should have been litigated in earlier proceedings. In *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd*, Peh Swee Chin FCJ (as His Lordship then was) opined that public policy considerations demands that a litigant be required to raise a cause of action based on the same facts or issues in the original earlier action to prevent multiplicity of actions. (para 11)

(3) Applying the wider doctrine of *res judicata*, the appellant had only itself to blame for pursuing with the claim of RM450,000 when it ought to have pursued with the claim for RM822,310.25. The fact that the respondent's claim revolved around the alleged agreement on costs was not an excuse for the appellant not to have pursued its claim for RM822,310.25 since a counterclaim was independent of the respondent's original claim based on the agreement for costs. Hence, the learned High Court Judge was right to strike out the appellant's claim in the second suit for offending the doctrine of *res judicata* as understood in the wider sense. (para 11)

(4) A detailed bill of costs must of necessity be submitted for taxation (s. 121(1)(a) read with s. 124(1) of the Legal Profession Act 1976). In any event, the appellant was precluded from claiming that the respondent did not demand from the appellant to submit its four detailed bills of costs for taxation since prayer (a) of the first suit challenged the validity of the said bills of costs. Further, the detailed bills of costs forwarded by the appellant took the form of bills which were to be submitted for taxation. (para 11)

(5) *Vide* the consent order, the appellant agreed not to tax the four detailed bills of costs until the disposal of the first suit. It sounds ill in the mouth for the appellant to now claim that the aggregate of the four detailed bills of costs had become a debt because the respondent did not require the bills to be submitted for taxation. Even if the appellant's claim in the second suit was not prohibited by the doctrine of *res judicata*, there was still no debt due from the respondent to the appellant based on the four itemised bills of costs. (para 11)

Bahasa Malaysia *Translation Of Headnotes*

Perayu merupakan peguamcara responden yang telah bertindak dalam beberapa tindakan undang-undang yang menimbulkan perbalahan. Setelah tindakan-tindakan tersebut diselesaikan, perayu telah menghantar dua bil dengan jumlah kasar kepada responden untuk bayaran. Bil pertama dengan jumlah kasar adalah RM350,000, manakala bil kedua dengan jumlah kasar adalah sebanyak RM450,000 ('bil kedua'). Perayu berhujah bahawa berdasarkan perjanjian lisan antara pihak-pihak, responden telah bersetuju untuk membayar RM800,000 sebagai jumlah penyelesaian penuh dan muktamad bagi kerja-kerja perundangan yang telah dibuat oleh perayu. Setelah membayar RM350,000, responden telah menyatakan bahawa jumlah RM350,000 merupakan jumlah yang telah disetujui oleh pihak-pihak dan bukannya RM800,000. Responden kemudiannya telah melantik firma peguamcara lain dan perayu telah menghantar empat bil kos yang dibutirkan secara terperinci kepada responden berkenaan bil kedua. Tidak berpuas hati dengan empat bil kos yang dibutirkan itu, responden telah memfailkan satu tindakan di Mahkamah Tinggi ('guaman pertama') dan menuntut bagi, antara lain, suatu deklarasi bahawa empat bil kos yang dibutirkan itu adalah terbatal dan tidak boleh dilaksanakan. Walau bagaimanapun, empat bil kos yang dibutirkan itu yang berbentuk bil kos telah pun difailkan untuk pentaksiran. Dengan persetujuan perayu, satu perintah persetujuan telah direkodkan dalam guaman pertama di mana perayu bersetuju untuk menangguhkan semua prosiding taksiran sehingga pelupusan akhir guaman pertama. Satu tuntutan balas telah dimasukkan ke dalam penyata pembelaan perayu di mana ia menuntut agregat untuk empat bil kos yang dibutirkan bagi jumlah RM822,310.25 kesemuanya dan secara alternatif, jumlah sebanyak RM450,000 seperti dituntut di dalam bil kedua. Walau bagaimanapun, peguam responden berhujah bahawa semasa perbicaraan, perayu memilih untuk mengabaikan tuntutan mereka untuk jumlah RM822,310.25 dan membuat tuntutan alternatif bagi jumlah RM450,000 seperti dalam bil kedua. Yang arif hakim walau bagaimanapun menolak kedua-dua tuntutan responden dan tuntuan balas perayu. Perayu kemudiannya memfailkan satu tindakan di Mahkamah Tinggi ('guaman kedua') menuntut untuk agreget bagi bil yang dibutirkan berjumlah RM822,310.25. Responden memohon di bawah A. 18 k. 19 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk membatalkan tuntutan perayu memandangkan tuntutan tersebut telah dihalang oleh doktrin *res judicata.* Yang arif hakim di dalam tindakan tersebut telah membatalkan tuntutan perayu dan memutuskan bahawa

terdapat penduaan tuntutan yang dibuat oleh perayu dalam guaman pertama dan tuntutan balas dalam tindakan kedua di mana tuntutan dalam kedua-dua guaman itu adalah sama bentuk berdasarkan fakta, isu dan kandungannya. Oleh itu, rayuan ini. Isu yang dibangkitkan untuk pertimbangan adalah sama ada perayu boleh meneruskan tindakannya bagi jumlah RM822,310.25 melalui guaman kedua.

Diputuskan (menolak rayuan dengan kos)
Oleh Anantham Kasinather HMR menyampaikan penghakiman mahkamah:

(1) Apabila tuntutan balas difailkan, perayu telah pun mengeluarkan empat bil kos yang telah dibutirkan dengan mengambil tempat bil kedua. Berdasarkan otoriti *Siew Kuen Williams v. Yong Siew In*, perayu sepatutnya mendapatkan perintah untuk taksiran bil yang dibutirkan itu oleh Pendaftar dalam guaman pertama walaupun taksiran bil kos yang dibutirkan masih berkemungkinan tanpa suatu perintah (s. 126(1) Akta Profesion Undang-Undang 1976).

(2) Doktrin *res judicata* dalam pengertian luasnya merangkumi pengecualian seorang litigan daripada membangkitkan, dalam prosiding seterusnya, perkara-perkara yang sepatutnya dibicarakan semasa prosiding terdahulu. Dalam *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd*, Peh Swee Chin HMP (Yang Arif pada masa itu) berpendapat bahawa pertimbangan polisi awam menuntut bahawa seorang litigan perlu membangkitkan kausa tindakan berdasarkan fakta-fakta atau isu yang sama dalam tindakan asal bagi mencegah tindakan berganda.

(3) Menggunapakai doktrin luas *res judicata*, perayu hanya boleh menyalahkan dirinya kerana meneruskan tuntutan untuk RM450,000 apabila ia sepatutnya meneruskan tindakan bagi RM822,310.25. Fakta bahawa tuntutan responden merangkumi perjanjian berdasarkan kos bukanlah satu alasan untuk perayu tidak meneruskan tuntutannya bagi RM822,310.25 memandangkan suatu tuntutan balas adalah bebas daripada tuntutan asal responden berdasarkan perjanjian untuk kos. Oleh itu, yang arif Hakim Mahkamah Tinggi betul dalam membatalkan tuntutan perayu bagi guaman kedua kerana melanggar doktrin *res judicata* seperti yang difahami dari pengertian luasnya.

(4) Bil kos yang dibutirkan mestilah ditaksirkan (s. 121(1)(a) dibaca dengan s. 124(1) Akta Profesion Undang-Undang 1976). Walau apapun, perayu dihalang daripada menyatakan bahawa responden tidak menuntut perayu mengemukakan empat bil kos yang dibutirkan bagi taksiran memandangkan permohonan (a) dalam guaman pertama mempertikaikan kesahan bil kos tersebut. Tambahan, bil kos yang dibutirkan dan dikemukakan oleh perayu mengambil bentuk bil yang telah pun difailkan untuk taksiran.

(5) Melalui perintah persetujuan, perayu telah bersetuju untuk tidak mentaksirkan empat bil kos yang dibutirkan itu sehingga pelupusan guaman pertama. Adalah tidak wajar bagi perayu untuk kini menuntut bahawa agregat keempat-empat bil kos yang dibutirkan itu telah menjadi satu hutang disebabkan responden tidak meminta bil-bil itu dikemukakan untuk taksiran. Walaupun tuntutan perayu di dalam guaman kedua tidak dihalang oleh doktrin *res judicata*, tiada hutang yang perlu dibayar oleh responden kepada perayu berdasarkan empat bil kos yang telah dibutirkan itu.

Case(s) referred to:

Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Greenhalgh v. Mallard [1947] 2 All ER 255 ***(refd)***

Henderson v. Henderson [1843] 3 Hare 100 ***(refd)***

Re Taxation of Costs; In Re Solicitors [1943] KB 69 ***(refd)***

Siew Kuen Williams v. Yong Siew In [1984] 1 CLJ 41; [1984] 2 CLJ (Rep) 450 HC ***(foll)***

Yat Tung Investment Co v. Dao Heng Bank [1975] AC 581 ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 116, 121(1)(a), 124(1), 126(1)

Rules of the High Court 1980, O. 18 r. 19

For the appellant - Ringo Low; M/s Ringo Low & Assocs

For the respondent - Justin Voon (Chia Wen Chow with him); M/s Chia Wen Chow & Assocs

[Appeal from High Court, Kuala Lumpur; Suit No: 22NCvC-423-2011]

Reported by Kumitha Abd Majid

A

JUDGMENT

Anantham Kasinather JCA:

Background Facts

B **[1]** The appellant was the solicitor for the respondent in a matter involving several contentious legal matters involving a company known as Rong Ji. On completion of the several contentious matters, the appellant submitted two gross sum bills to the respondent for payment by him. According to the appellant, C the two bills were in respect of the seven different contentious matters that the appellant had acted as the solicitor for the respondent. The first gross sum bill for RM350,000 ('first bill') was dated 26 April 2010 and was in respect of three of these contentious matters. The second gross sum bill for RM450,000 D ('second bill') was also dated 26 April 2010 and was in respect of the four remaining contentious matters. According to the appellant, the first and second bills were despatched pursuant to an oral agreement reached between the parties whereby the respondent agreed to pay RM800,000 by way of full and final E settlement for the legal work undertaken by the appellant for and on behalf of the respondent in respect of these seven contentious matters.

[2] The respondent paid RM350,000 claiming that this amount F was the agreed amount payable by way of fees and not RM800,000 as alleged by the appellant. Following the payment of RM350,000, the respondent engaged a new firm of solicitors and the new firm of solicitors demanded a detailed bill in respect of the second bill. The appellant duly obliged and forwarded four G detailed bills of costs in respect of the four contentious matters forming the subject matter of the second bill. The four detailed bill of costs were all dated 15 October 2010.

[3] The respondent not being satisfied with the detailed bills of H costs rendered by the appellant filed an action with the Kuala Lumpur High Court bearing Civil Suit number S-22-NCVC-70-2010 ('the first suit'). In this suit, the respondent claimed, *inter alia*, the following:

I i) A declaration that the four detailed bills of costs are void and unenforceable or alternatively, the appellant to be restrained from proceeding with the hearing or taxation of the said four details bills of costs;

ii) The appellant be directed to resend fresh bills of costs for all the seven cases limited to the sum of RM350,000 or such other sum as is appropriate; and

iii) The appellant be directed to refund the sum of RM350,000 to stakeholders to pay towards the taxed costs of the seven cases aforementioned.

[4] The four detailed bills of costs rendered by the appellant took the form of bills of costs which had already been filed for taxation. Hence, prayer (1) above. The respondent concerned that the appellant may proceed with the taxation of the four bills of costs whilst the first suit was pending disposal, filed an injunction to prevent the appellant from proceeding with the taxation of the four detailed bills of costs until the first suit was determined. In the event, with the consent of the appellant, a consent order was recorded on 9 November 2010 in the first suit whereby the appellant agreed to stay all taxation proceedings until the final disposal of the first suit (see pp. 288 and 289 or AR Jilid 4 Bahagian C).

[5] The defence filed by the appellant in the first suit in its original form did not include a counterclaim. However, the appellant applied on 29 December 2010 to amend its statement of defence in order to include a counterclaim. The counterclaim incorporated a claim for the aggregate of the four detailed bills of costs amounting to RM822,310.25 in all and in the alternative the amount of RM450,000 demanded in the second bill (see p. 305 Jilid 5 Bahagian C). According to counsel for the respondent, the appellants during the course of the trial elected to abandon their claim for RM822,310.25 and instead pursued the alternative claim for the sum of RM450,000 contained in the second bill.

[6] On the conclusion of the first suit, the learned Justice Prasad dismissed all of the prayers sought by the respondent and the only prayer for the amount of the first bill sought by the appellant on the single ground that under s. 116 of the Legal Profession Act 1976 any agreement on costs has to be in writing. Since both the claim and the counterclaim to be valid required a written agreement under s. 116 and there was none on

A the facts of this case, His Lordship dismissed both the claim and the counterclaim. However, the judgment of His Lordship included the following words:

> I further gave liberty to the defendant to recover his remaining
B bills according to the procedure set out under the Legal Profession Act 1976.

Notwithstanding holding the agreement on costs to be invalid, His Lordship did not order prayer (iv) which required the respondent to refund the sum of RM350,000 paid by the respondent pursuant
C to the oral agreement on costs.

[7] The judgment of Justice Prasad formed a subject matter of an appeal and the appeal was heard by the Court of Appeal on 12 September 2011. The respondent appealed against the order
D of the learned judge denying all the prayers in the first suit and the words in italics above. The Court of Appeal dismissed the appeal but deleted the words in italics.

[8] On 24 May 2011, the appellant filed Civil Suit Number
E 22-NCVC-423-2011 ('the second suit'). In this second suit, the appellant claimed the aggregate of the four detailed bills of costs amounting to RM822,310.25. The respondent applied under O. 18 r. 19 to strike out the claim of the appellant citing *inter alia* that the appellant's claim was barred by the doctrine of *res judicata*.
F The appellant in the affidavit filed an opposition to the O. 18 r. 19 of the Rules of the High Court 1980 application averred that it was entitled to pursue for the sum of RM822,310.21 because Justice Prasad had granted it liberty to proceed with its claim under the Legal Profession Act 1976 (see para. 7 of the
G affidavit of Mr. Lee Chuen Tiat at p. 352 of Jilid 5 Bahagian C). This assertion ceased to be true following the decision of the Court of Appeal on 12 September 2011.

[9] Justice VT Singham heard the respondent's application on 17 October 2011 and granted the same. His Lordship in striking
H out the appellant's claim ruled that there was duplicity in the claim pursued by the appellant in the first suit and the counterclaim in the second suit in that the claims in both suits were substantially similar in terms of the facts, the issues and in substance.

I

Decision Of The Court

[10] We heard this appeal on 3 February 2012 and dismissed the same. In our judgment, the first issue which needs to be addressed is the effect in law of the replacement of the earlier gross sum bill by an itemised bill of costs at the request of the respondent. This very issue was addressed to the court in *Siew Kuen Williams v. Yong Siew In* [1984] 1 CLJ 41; [1984] 2 CLJ (Rep) 450; [1984] 1 MLJ 95 (included in the bundle of authorities of the respondent). Her Ladyship Siti Norma Yaakob J (as Her Ladyship then was) answered this question by adopting the answer provided in *Re Taxation of Costs; In Re Solicitors* [1943] KB 69 that:

> The gross sum bill shall thereupon be of no effect.

Applying this proposition of law to the facts of this case, as of 15 October 2010 when the appellant submitted the four detailed bills of costs to the respondent, the earlier gross sum bill for RM450,000 ceased to be of any effect. In our judgment, following the authority of *Siew Kuen Williams v. Yong Siew In*, the cause of action available to the appellant when it applied to amend its counterclaim on 29 December 2010 was to seek an order to have its four detailed bill of costs taxed by the Registrar of the court. This is evident from the following passage in the same judgment where Her Ladyship quoted Goddard LJ to have said in the same case when it came on appeal that:

> If a solicitor delivers a gross sum bill and his client asks for a detailed bill, the solicitor must withdraw his gross sum bill and is treated as if it has never been delivered. The detailed bill becomes the material bill and is subject to taxation.

(see p. 96 of the reported judgment of the court).

On the facts of this case the appellant instead of seeking an order for the taxation of the same, claimed the sum of RM450,000. To make matters worse, the appellant pursued the claim for RM450,000 after abandoning the pleaded claim for RM822,310.25.

[11] The question posed to us in this appeal was whether it is open to the appellant to pursue the claim for RM822,310.25 by way of the second suit. In our judgment, the learned Justice VT Singham was right to dismiss the appellant's claim for the following reasons:

a) The fact of the matter is that at the time of filing the counterclaim on 29 December 2010, the appellant had already issued the four detailed itemised bills of costs in place of the second bill. Accordingly, based on the authority of *Siew Kuen Williams v. Yong Siew In*, the appellant ought to have sought an order to have the four detailed bills of costs taxed by the Registrar in the first suit although strictly taxation of a detailed bill of cost is possible without an order (see s. 126(1) of the Legal Profession Act 1976). The only explanation proffered by learned counsel for the appellant for not doing this was that the first suit only concerned the existence, if any, of a valid agreement on costs. The four detailed bills of costs had no relevance to the issue of whether the parties had reached agreement on costs. With respect, we beg to differ. It has long been established that the doctrine of *res judicata* in its wider sense extends to preclude a litigant from raising in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The *locus classicus* of this aspect of the *res judicata* doctrine is best captured in the words of Wigram VC in the case of *Henderson v. Henderson* [1843] 3 Hare 100. Wigram VC explained the doctrine at p. 115 of the reported judgment of the court in the following manner:

> ... where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time ...

Lord Kilbrandon in *Yat Tung Investment Co v. Dao Heng Bank* [1975] AC 581 (PC) after adopting the above passage in the judgment of Wigram VC highlighted that in the subsequent case of *Greenhalgh v. Mallard* [1947] 2 All ER 255. Somervell LJ expended on the Vice-Chancellor's phrase:

> every point which properly belonged to the subject of litigation" to mean:
>
> > ... *res judicata* for this purpose is not confined to the issues which the Court is actually asked to decide, but .... It covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them.

Our Federal Court in the case of *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 followed the decision of the Privy Council in *Yat Tung Investment Co v. Dao Heng Bank* (PC) and Somervell LJ's pronouncements in *Greenhalgh v. Mallard*. Peh Swee Chin FCJ (as His Lordship then was) opined that public policy considerations demand that a litigant be required to raise a cause of action based on the same facts or issues in the original earlier action to prevent multiplicity of actions. Applying the wider doctrine of *res judicata* to the facts of this case, the appellant has only itself to blame for pursuing with the claim for RM450,000 when following the authority of *Siew Kuen Williams v. Yong Siew In*, it ought to have pursued with the claim for RM822,310.25. The fact that the respondent's claim revolved around the alleged agreement on costs, with respect, is no excuse for the appellant not having pursued its claim for RM822,310.25 since a counterclaim is independent of the respondent's original claim based on the agreement for costs. Accordingly, in our judgment, the learned judge was right to strike out the appellant's claim in the second suit for offending the doctrine of *res judicata* as understood in the wider sense.

b) There is yet another reason why the appellant's claim is not sustainable in law. The appellant's claim in the second suit is premised on the aggregate of the four itemised bills of costs already being a debt due from the respondent to the appellant

purportedly because of the failure of the respondent to demand that the four bills be submitted for taxation before the expiration of one month. This submission has no merit based on the pronouncements of Goddard UJ in *Re Taxation of Costs*; *In Re Solicitors (supra)* and adopted by Siti Norma Yaakob J in *Siew Kuen Williams v. Yong Siew In (supra)* that a detailed bill of costs must of necessity be submitted for taxation (see s. 121(1)(a) read with s. 124(1) of the Legal Profession Act 1976). In any event, on the particular facts of this case, the appellant is precluded from claiming that the respondent did not demand that the appellant submit its four detailed bills of costs for taxation since prayer (a) of the first suit filed by the respondent challenged the validity of the four detailed bills of costs. Secondly, the detailed bill of costs forwarded by the appellant took the form of bills which were to be submitted for taxation (see pp. 206 to 234 of Jilid 4 Bahagian C). Thirdly, the parties entered into a consent order on 9 November 2010 wherein the appellant agreed not to tax the four detailed bills of costs until the disposal of the first suit. In the face of the aforesaid facts, it sounds ill in the mouth of the appellant to now claim that the aggregate of the four detailed bills of costs have become a debt because the respondent did not require the bills to be submitted for taxation. Accordingly, even if the appellant's claim in the second suit is not prohibited by the doctrine of *res judicata*, in our judgment, there is no debt due from the respondent to the appellant based on the four itemised bills of costs.

[12] Accordingly, we dismiss the appeal with costs. The appellant to pay costs of RM10,000 to the respondent. By consent the deposit to be refunded to the appellant.